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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/658,763	09/08/2000	Herbert Parks Hartgrove	PG16044P0200US	3252
32116	7590	12-03/2003	EXAMINER	
WOOD, PHILLIPS, KATZ, CLARK & MORTIMER 500 W. MADISON STREET SUITE 3800 CHICAGO, IL 60661			GUARRIELLO, JOHN J	
			ART UNIT	PAPER NUMBER
			1771	

DATE MAILED: 12/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

### Office Action Summary

**Application No.**

09/658,763

**Applicant(s)**

HARTGROVE, HERBERT PARKS

**Examiner**

John J. Guarriello

**Art Unit**

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14 and 16-25 is/are pending in the application.
- 4a) Of the above claim(s) 1-11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12-14, 16-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. §§ 119 and 120**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

15. The Examiner acknowledges the amendment, and the RCE of 10/15/2003.

16. Claims 1-11 are withdrawn to a non-elected invention. Claims 12-14, 16-25 are under examination.

17. The Examiner notes for the record that the markup version of 5/6/2003 previously supplied by applicant, and noted in the final rejection of 7/15/2003, does not indicate changes made to the newly amended claims, NOTE: claims 13 and 14 should be indicated as: i.e. original, currently amended, cancelled, withdrawn, new, previously presented, or not entered as noted in 36 C.F.R. 1.121. This should be addressed.

Note : claim 4, the number for claim 4, is not stated in the listing of claims submitted 10/15/2003.

***Claim Rejections - 35 USC § 112***

18. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

19. Claims 12-14, 16-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 12, it is the Examiner's position that the claim is directed to a durable nonwoven fabric comprising a web of polyester fibers which is imaged and patterned, and before dyeing is saturated with a pre-dye finish before curing. Claim 12 recites physical properties of a nonwoven fabric with a basis weight, Martindale abrasion value, a combined drape value, and a combined bend value.

**Ex parte Slob, 157 USPQ 172** states the following with regard to an article claimed by defining property values:

Claims merely setting forth physical characteristics desired in an article, and not setting forth specific compositions which would meet such characteristics, are invalid as vague, indefinite, and functional since they cover any conceivable combination of ingredients presently existing or which might be discovered in future and which would impart desired characteristics; thus, the expression "a liquefiable substance having a liquefaction temperature from about 40 degrees Centigrade to about 300 degrees C and being compatible with the ingredients in the powdered detergent composition" is too broad and indefinite since it purports to cover everything which will perform the desired functions regardless of its composition, and, in effect, recites compounds by what it is desired that they do rather than what they are; the expression is too broad since it appears to read upon materials that could not possibly be used to accomplish purposes intended.

Thus, claims 12-14, 16-25 are indefinite for reciting only the desired physical characteristics or properties of the nonwoven fabric,

rather than setting forth the structural and/or chemical characteristics of said nonwoven fabric.

20. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

21. Claims 12-14, 16-25 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.

The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The new language in claim 12, "comprising an elastomeric polymer emulsion" is new matter since there is no clear evidence that this was part of the specification as filed. It is the Examiner's position that this limitation of the new phrase is new matter.

***Claim Rejections - 35 USC § 103***

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22. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

23. Claims 12-14, 16-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cruise et al. 5,874,159 in view of Drellich et al. 5,098,764 and Namiki et al. 3,966,406 and Tohyama et al. 5,266,354 and Lilyquist 3, 988,343.

Rejection is substantially maintained except with the addition of Lilyquist. Cruise describes a method of making nonwoven fabrics which are durable, (see abstract). Cruise describes the fabric is made of two layers (corresponding to a precursor web), (see abstract; column 2, lines 11-22). Cruise describes the base fabrics can be similar or different and can be hydroentangled, (column 3, lines 12-19; column 4, lines 65-68). Cruise describes the fabric layers can be made of polyester and polyamide (corresponding to nylon), or blends thereof (column 6, lines 39-44). Cruise differs from the claimed

invention because it is silent about the image transfer device to form an imaged non-woven fabric, dyeing, and pre-dye finish or coating.

Drelich describes an image transfer device to form an imaged nonwoven fabric with enhanced physical properties and fabric with pleasing appearance, (column 2, lines 6-11; see Figure 3). Drelich describes the production of fabrics with superior properties with entangled fibers, (column 2, lines 38-68).

Namiki describes dyeing of fibrous articles, (see abstract). Namiki describes dyeing of polyester-type fibers which can be in the form of knitted, woven, or non-woven fabric, (column 3, lines 5-13). Namiki describes jet dyeing of fabrics, (column 3, lines 14-32).

Tohyama describes a coated (corresponding to a pre-dye finish before curing) fabric of polyester fiber, (see abstract). Tohyama describes the the resin material as a coating of which acrylic is one coating resin, (column 2, lines 42-47) and this resin material can be a coating or pre-dye finish, (column 3, lines 26-36, 40-45), and can be applied by any one of several methods.



It would have been obvious to one of ordinary skill in the art to modify the fabric of Cruise with the image transfer device of Drelich and to modify the fabric of Cruise with the jet dyeing of Namiki and to coat or finish the fabric of Cruise with the resin material coating of Tohyama motivated with the expectation that improved fabric properties of image and pattern appearance as well as free from dye irregularity, (column 2, lines 15-17 of '406), would result, (column 2, lines 7-8, 67-68) as well as improving the dye from migrating, (column 3, lines 57-59 of '354).

Applicant's arguments regarding Cruise and abrasion resistance have been considered, but it is the Examiner's position that the polyester fabric layers are described by Cruise and the properties of abrasion resistance are noted, but since the claim sets forth physical characteristics desired in the article and no specific composition of polyester which would meet those characteristics the claims are vague, indefinite and functional since they cover any conceivable combination of ingredients or components either presently existing or

which may be discovered in the future, see **Ex Parte Slob, 157 USPQ 172 (Bd.PatApp&Int 1968)**.

Furthermore, it is the Examiner's position that since the prior art of record describes the basic chemical and structural characteristics of the nonwoven fabric, the other properties would be inherent.

Applicant's other arguments regarding abrasion resistance have been considered but Cruise does describes durability, (column 2, lines 11-22), which implies some aspects of abrasion resistance.

Applicant's arguments regarding product-by-process were considered but are not considered germane with the grounds of rejection regarding **Ex parte Slob** as noted above.

Regarding the "elastomeric polymeric emulsion" the acrylic resin of '354 implies this polymeric emulsion and this is further evidenced to be obvious in view of Lilyquist 3,988,342, (column 1, lines 55-57; column 2, lines 37-53).

24. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John J.

Application/Control Number: 09/658,763  
Art Unit: 1771

Page 10

Guarriello whose telephone number is 703-308-3209. The examiner can normally be reached on Monday to Friday from 8 am to 4 pm.

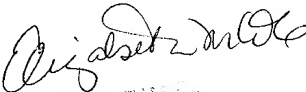
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris, can be reached on (703) 308-2414. The fax phone number for the organization where this application or proceeding is assigned is 703-305-5408.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

  
John J. Guarriello:gj

Patent Examiner

November 24, 2003

  
ELIZABETH M. [unclear]  
PRIMARY EXAMINER